



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/173749

PRELIMINARY RECITALS

Pursuant to a petition filed April 19, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the MY Choice Family Care in regard to Medical Assistance (MA), a hearing was held on May 17, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner was only eligible for the Family Care Program (FCP) at the non-nursing home level of care.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
MY Choice Family Care
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. The petitioner previously received services through the Family Care Program (FCP) at the nursing home level of care.

2. On February 15, 2016 the FCP conducted a new long-term-care functional screen (LTCFS) of the petitioner.
3. The LTCFS showed that the petitioner needed assistance with bathing and dressing. She was independent in all other Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs).
4. On April 4, 2016 the Family Care Program (FCP) sent the petitioner a notice stating that there had been a change in her level of care, and that she was no longer functionally eligible for the FCP at the nursing home level care. She remained eligible at the non-nursing home level of care.
5. On April 19, 2016 the Division of Hearings and Appeals received the petitioner's Appeal Request.
6. The petitioner is 60 years old with diagnoses of non-insulin dependent diabetes type 2, high blood pressure, allergies / asthma, degenerative lumbar/lumbosacral disc disease, low back pain, and sciatica.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

Wis. Adm. Code, §DHS 10.33(2) provides that an FCP applicant must have a functional capacity level of comprehensive or intermediate; I note here that Wis. Stat., §46.286, uses the terms “nursing home” and “non-nursing home” levels just as the agency in this case. If the person meets the comprehensive (nursing home) level, he is eligible for full services through a care management organization (CMO), including Medical Assistance (MA). Wis. Adm. Code, §DHS 10.36(1)(a). If the person meets the intermediate (non-nursing home) level, he is eligible for full services only if he is in need of adult protective services, he is financially eligible for MA, or he is grandfathered as described in §DHS 10.33(3). Wis. Adm. Code, §DHS 10.36(1)(b). A person eligible under the non-nursing home level is eligible for less FCP services.

Wis. Adm. Code, §DHS 10.33(2)(c) describes comprehensive functional capacity:

(c) Comprehensive functional capacity level. A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
 - a. The person requires frequent medical or social intervention to safely maintain an

acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.

b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self neglect or resistance to needed care.

Wis. Adm. Code, §DHS 10.33(2)(d) describes intermediate functional capacity:

d) *Intermediate functional capacity level.* A person is functionally eligible at the intermediate level if the person is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others, as is evidenced by a finding from application of the functional screening that the person needs assistance to safely or appropriately perform either of the following:

1. One or more ADL.
2. One or more of the following critical IADLs:
 - a. Management of medications and treatments.
 - b. Meal preparation and nutrition.
 - c. Money management.

ADLs include bathing, dressing, eating, mobility, and transferring. Wis. Adm. Code, § DHS 10.13(1m). IADLs include meal preparation, medication management, money management, laundry and chores, telephone, and transportation. Critical IADLs include management of medications and treatments, meal preparation and nutrition, and money management.

In this case the LTCFS found that the petitioner needed assistance with bathing and dressing, but that she was independent in all other ADLs and IADLs. Previously the petitioner needed assistance with meal preparation and money management. She also had some limitations in her cognition. Between the old and new LTCFS auto bill pay has been set up allowing the petitioner to manage her own money, she no longer takes codeine cough syrup, which had limited her cognition, and she is able to shop for groceries.

The petitioner argued that she still needed assistance with bill pay. She testified that she always had auto bill pay, but her friend still has to help her pay her bills. The FCP notes that the petitioner is able to go to stores and pay by herself. The petitioner did not dispute these facts. This demonstrates that the petitioner can manage her own money. She knows how much money she has, and how much money she can spend. There is no evidence that she has over drafted or that her bills are not paid.

The petitioner further testified that she needed assistance while at the grocery store, cleaning her house, and remembering her medication. Cleaning is not a critical IADL, thus, it is immaterial to the petitioner's level of care eligibility. With respect to grocery shopping, the petitioner is self-sufficient. She goes to stores during the day is able to purchase items by herself. Even if she occasionally has to ask a friendly person or store worker to assist, she still accomplishes this task on her own. I do not find the petitioner's testimony that she does not remember her medication credible. There is no evidence that the petitioner is not taking her medication correctly. Medication is used and refilled properly.

I agree with the agency that the petitioner needs assistance with bathing and dressing, but that she was independent in all other ADLs and IADLs. There is no dispute that the petitioner qualifies for the FCP at the non-nursing home level of care. The petitioner will continue to receive reduced services at this non-nursing home level of care.

CONCLUSIONS OF LAW

The agency correctly determined that the petitioner was only eligible for the Family Care Program (FCP) at the non-nursing home level of care.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 10th day of June, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 10, 2016.

MY Choice Family Care
Office of Family Care Expansion
Health Care Access and Accountability